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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 167

A. H. THORNBURGH, ADMINISTRATOR OF THE ESTATE OF WINSTON ARTHUR CAMERON, DECEASED, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals (R. 294) is reported in 111 F. (2d) 278.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered May 2, 1940 (R. 300–301). The petition for a writ of certiorari was filed June 18, 1940. The jurisdiction of this Court is invoked under

Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the court below erred in reversing a judgment in favor of petitioner, entered upon a jury verdict, on the ground that the verdict was not supported by any substantial evidence.[1]

STATUTE AND REGULATIONS INVOLVED

The contract sued upon was issued pursuant to the provisions of the War Risk Insurance Act and insured against death or total permanent disability (c. 105, Sec. 400, 40 Stat. 398, 409).

The same Act, as amended, provided that the Director of the Bureau of War Risk Insurance—

> shall administer, execute, and enforce the provisions of this Act, and for that purpose have full power and authority to make rules and regulations not inconsistent with the provisions of this Act, necessary or appropriate to carry out its purposes, * * * (c. 77, Sec. 13, 40 Stat. 555).

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[1] If certiorari should be granted, the Government would urge in support of the decision below that the District Court erred in refusing respondent's requested instruction with respect to the burden of proof (R. 283). The District Court's refusal to give this instruction was assigned as error in the court below (R. 291), and, contrary to petitioner's assertion (Pet. 3), the point was urged both by brief (Br. 13–14) and in oral argument before the court below. In view of the court's decision on the main issue, however, it was unnecessary to decide this question.

Pursuant to this authority there was promulgated on March 9, 1918, Treasury Decision No. 20, reading:

> Any impairment of mind or body which renders it impossible for the disabled person to follow continuously any substantially gainful occupation shall be deemed * * * to be total disability.
>
> Total disability shall be deemed to be permanent whenever it is founded upon conditions which render it reasonably certain that it will continue throughout the life of the person suffering from it. * * * [Regulations and Procedure, U. S. Veterans' Bureau, Volume 1, p. 9.]

STATEMENT

This suit was originally brought by Winston Arthur Cameron to recover permanent total disability benefits under a $10,000 contract of war risk term insurance issued to Cameron during his naval service from October 6, 1917, to April 9, 1918. No premium was actually paid on Cameron's policy after the month of May 1918, but by reason of compensation due him at that time and remaining uncollected until June 24, 1920, the policy remained in force until the latter date. See World War Veterans' Act, 1924, Section 305, as amended (U. S. C., Title 38, Sec. 516). At the original trial, issue was joined on Cameron's allegation that he became totally and permanently dis-

abled on or before May 11, 1920. The trial resulted in a verdict and judgment in favor of the plaintiff. On appeal to the court below, the judgment was reversed on the ground that the verdict was not supported by substantial evidence. *United States* v. *Cameron,* 87 F. (2d) 61, certiorari denied, 301 U. S. 688.[2]

Cameron died on January 21, 1939 and petitioner, having been appointed administrator of Cameron's estate, was substituted as plaintiff (R. 1–4). Petitioner thereupon filed an amended petition (R. 1–4), alleging, as before, that Cameron had become totally and permanently disabled on May 11, 1920 (R. 2). It was stipulated at the second trial, however, that there was sufficient uncollected compensation to keep the insurance in force until June 24, 1920 (R. 25), and the case was submitted to the jury on the issue of whether the disability had become permanent prior to that date (R. 268). The verdict and judgment were in favor of petitioner (R. 6–7) and respondent again appealed (R. 8), urging, as one of several grounds for reversal (R. 286–291), that the trial court erred in overruling its motion for a directed verdict at the close of the case for lack of substantial evidence that the in-

[2] The facts stated in this paragraph are taken from the record in this Court in the original suit, No. 828, October Term 1936. See Government's Brief in Opposition, p. 3.

sured became totally and permanently disabled during the period of insurance protection (R. 265, 286).

The Circuit Court of Appeals, observing that the "evidence adduced at both trials, except some of the medical evidence, was substantially the same" (R. 295), held, in accordance with its previous decision, that the record failed to furnish any substantial support for the finding that Cameron's total disability had become permanent within the period of insurance protection (R. 294–300).

ARGUMENT

The only issue in this case, on the merits, is whether Cameron's total disability became permanent on or before June 24, 1920. Decision of this issue depends, as petitioner admits (Pet. 17), upon the purely factual question of whether it was reasonably certain on or before that date that Cameron would continue to be totally disabled throughout life. The court below, after a careful examination of the record, came to the conclusion that there was no substantial evidence supporting the jury's verdict in favor of the petitioner on this point. The decision seems plainly correct for the reasons set forth at length in the court's opinion (R. 294–300). In any event, the decision obviously presents no occasion for further review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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